

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 6888

DATE COMPLAINT FILED: 10/23/14

11/3/14

8/28/15

DATE OF NOTIFICATION: 10/28/14

11/7/14

9/9/15

9/25/15

DATE OF LAST RESPONSE: 12/14/15

DATE ACTIVATED: 3/23/15

ELECTION CYCLE: 2012, 2014

EARLIEST SOL: 8/1/2016

LATEST SOL: 10/9/2019

**COMPLAINANTS:**

American Democracy Legal Fund

Brad Woodhouse

**RESPONDENTS:**

Republican National Committee and Anthony  
Parker in his official capacity as treasurer

American Crossroads and Caleb Crosby in his  
official capacity as treasurer

Crossroads GPS

Americans for Prosperity

GOP Data Trust LLC<sup>1</sup>

i360, LLC

National Republican Senatorial Committee and  
Keith A. Davis in his official capacity as treasurer

Freedom Partners Action Fund, Inc., and Thomas F  
Maxwell III in his official capacity as treasurer

<sup>1</sup> Since the filing of its first response, this entity has changed its name to DT Client Services LLC. See Resp. of DT Client Services LLC at 1 (Oct. 2, 2015).

State Party Committee Respondents:

Arizona Republican Party and Timothy Lee in his  
official capacity as treasurer

Montana Republican State Central Committee and  
Deborah Brown in her official capacity as treasurer

West Virginia Republican Party, Inc. and Michelle  
Wilshere in her official capacity as treasurer

Massachusetts Republican Party and Brent T.  
Andersen in his official capacity as treasurer

Candidate and Authorized  
Committee Respondents:

Andrew Walter

Andrew Walter for Congress and Chris Marston in  
his official capacity as treasurer

Benjamin Sasse

Ben Sasse for US Senate Inc. and Mark Fahleson in  
his official capacity as treasurer

Carl DeMaio

Carl DeMaio for Congress and Paul Kilgore in his  
official capacity as treasurer

Robert Goodlatte

Bob Goodlatte for Congress Committee and  
Kenneth Lorenz Prickitt in his official capacity as  
treasurer

Robert T. Schilling

Bobby Schilling for Congress and Mitch  
Heckenkam in his official capacity as treasurer

Elizabeth Cheney

Cheney for Wyoming and Mark Vincent in his  
official capacity as treasurer

1 Thomas Cotton  
2  
3 Cotton for Senate and Crate Bradley in his official  
4 capacity as treasurer  
5  
6 Doug Ose  
7  
8 Doug Ose for Congress and Vona Copp in her  
9 official capacity as treasurer  
10  
11 Elise Stefanik  
12  
13 Elise for Congress and James Morris in his official  
14 capacity as treasurer  
15  
16 Paul Dietzell  
17  
18 Friends of Dietzell and Brandon Lagarde in his  
19 official capacity as treasurer  
20  
21 Karen Handel  
22  
23 Handel for Senate Inc. and Roger Santi in his  
24 official capacity as treasurer  
25  
26 William Hurd  
27  
28 Hurd for Congress and Bradley Crate in his official  
29 capacity as treasurer  
30  
31 Steve Lonegan  
32  
33 Lonegan for Senate Inc. and Scott B. Mackenzie in  
34 his official capacity as treasurer  
35  
36 Matt Rosendale  
37  
38 Matt Rosendale for Montana and Bill Vancanagan  
39 in his official capacity as treasurer  
40  
41 Michael McFadden  
42  
43 McFadden for Senate and Paul Kilgore in his  
44 official capacity as treasurer  
45

Martha McSally

McSally for Congress and James Thomas III in his  
official capacity as treasurer

Michael Turner

Mike Turner for Congress and Kyle Walton  
Denham in his official capacity as treasurer

Robert J. Wittman

Rob Wittman for Congress and Steve Ralls in his  
official capacity as treasurer

Matthew D. Schultz

Schultz for Iowa and David Overholtzer in his  
official capacity as treasurer

Edward Scott Rigell

Scott Rigell for Congress and Joseph B. Wood in  
his official capacity as treasurer

Steven Daines

Steve Daines for Montana and Lorna Kuney in her  
official capacity as treasurer

Dan Sullivan

Sullivan for US Senate and Eric Campbell in his  
official capacity as treasurer

Thomas W. Reed II

Tom Reed for Congress and Marc Valerio in his  
official capacity as treasurer

Lynn Jenkins

Lynn Jenkins for Congress and Heather Grote in her  
official capacity as treasurer

Jeb Bush

Jeb 2016, Inc., and William Simon in his official  
capacity as treasurer

Scott Walker

Scott Walker, Inc., and Kate Lind in her official  
capacity as treasurer

Ted Cruz

Cruz for President and Bradley S. Knippa in his  
official capacity as treasurer

Marco Rubio

Marco Rubio for President and Lisa Lisker in her  
official capacity as treasurer

Chris Christie

Chris Christie for President, Inc., and Ronald  
Gravino in his official capacity as treasurer

Bobby Jindal

Jindal for President and Rolfe McCollister, Jr., in  
his official capacity as treasurer

Rick Perry

Perry for President, Inc., and Dr. Richard Box in his  
official capacity as treasurer

Rick Santorum

Santorum for President 2016 and Greg Rothman in  
his official capacity as treasurer

Mike Huckabee

Huckabee for President, Inc., and Cale Turner in his  
official capacity as treasurer

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Renee Ellmers

Renee Ellmers for Congress Committee and Al  
Lytton in his official capacity as treasurer

Kevin Yoder

Yoder for Congress, Inc., and Donald Kaiser in his  
official capacity as treasurer

Kristi Noem

Kristi for Congress and Ted Hustead in his official  
capacity as treasurer

Morgan Griffith

Morgan Griffith for Congress and John Selph in his  
official capacity as treasurer

Alan Sanborn

Sanborn for Congress and Ralph Maccarone in his  
official capacity as treasurer

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30116

52 U.S.C. § 30118

52 U.S.C. § 30125

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION**

This matter involves allegations that the Republican National Committee and Anthony  
Parker in his official capacity as treasurer ("RNC"), American Crossroads and Caleb Crosby in  
his official capacity as treasurer ("American Crossroads"), Crossroads GPS, Americans for  
Prosperity ("AFP"), GOP Data Trust LLC ("Data Trust"), i360, LLC ("i360"), the National

1 Republican Senatorial Committee and Keith A. Davis in his official capacity as treasurer  
2 ("NRSC"), Freedom Partners Action Fund, Inc., and Thomas F Maxwell III in his official  
3 capacity as treasurer ("Freedom Partners"), the State Party Committee Respondents, and the  
4 Candidate and Authorized Committee Respondents violated the Federal Election Campaign Act,  
5 as amended (the "Act"). Specifically, the Complaint alleges that: (1) AFP, American  
6 Crossroads, Freedom Partners, and Crossroads GPS made excessive in-kind contributions to the  
7 RNC, the State Party Committee Respondents, the NRSC, and the Candidate and Authorized  
8 Committee Respondents in the form of coordinated communications; (2) Data Trust made  
9 prohibited in-kind contributions to the RNC, and (3) the RNC "illegally established, financed,  
10 maintained, and/or controlled" Data Trust.<sup>2</sup>

11 As discussed below, none of the respondents appears to have violated the Act.  
12 Accordingly, we recommend that the Commission find: (1) no reason to believe AFP, American  
13 Crossroads, Crossroads GPS, Freedom Partners, the NRSC, the RNC, the State Party Committee  
14 Respondents, and the Candidate and Authorized Committee Respondents violated 52 U.S.C.  
15 §§ 30116 or 30118 by making or receiving prohibited or excessive in-kind contributions in the  
16 form of coordinated communications; (2) no reason to believe Data Trust or the RNC violated  
17 52 U.S.C. § 30118 by making or receiving prohibited in-kind contributions in the form of data  
18 management services; and (3) no reason to believe the RNC or Data Trust violated 52 U.S.C.  
19 § 30125 by soliciting, receiving, or directing funds that were not subject to the prohibitions,  
20 limitations, and reporting requirements of the Act.

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<sup>2</sup> Compl. at 11-19; Second Supp. Compl. at 9-15.



**II. FACTS**

**A. Respondents**

The RNC is the national party committee of the Republican Party. Data Trust is a for-profit "vendor to conservative and Republican organizations that participate in the political process and undertake issue advocacy campaigns."<sup>3</sup> Respondent i360 is a "for-profit company that serves as a data warehouse and data resource vendor to its customers, which include businesses, not-for-profit entities, political committees, candidates, and political party committees."<sup>4</sup> American Crossroads is registered with the Commission as an independent expenditure-only committee. Crossroads GPS and Americans for Prosperity are non-profit corporations that are not registered with the Commission as political committees. Freedom Partners is registered with the Commission as an independent expenditure-only committee. The NRSC is a Republican Party committee.

The Arizona Republican Party, West Virginia Republican Party, Massachusetts Republican Party, and Montana Republican State Central Committee (the "State Party Committee Respondents") are state committees of the Republican Party.<sup>5</sup> The 47 candidates identified as respondents (together with their authorized committees and treasurers, the

<sup>3</sup> Data Trust Resp. at 1. Data Trust is actually two entities. The Data Trust is a Virginia business trust which holds title to intellectual property, including (1) the data generated by its wholly-owned operating company, GOP Data Trust LLC (the "LLC"), and (2) data gained through the Data Exchange Agreement with the RNC. The Virginia business trust issues stock to private investors. The LLC has an agreement with the Virginia business trust whereby it leases the data obtained through the Data Exchange Agreement with the RNC and then exchanges, leases, and sells data to clients. Data Trust Resp. at 3; RNC Resp. at 4, n. 4.

<sup>4</sup> See i360 Resp. at 2.

<sup>5</sup> Neither the Montana Republican State Central Committee nor the Massachusetts Republican Party filed a response in this matter. Given the available information, we are comfortable making collective recommendations for the State Party Committee Respondents.

"Candidate and Authorized Committee Respondents") were candidates for Congress, Senate, or President in 2014 or 2016.<sup>6</sup>

**B. Background**

**1. Formation of Data Trust**

The Complaint alleges that the RNC established and continues to control Data Trust.<sup>7</sup> As support, the Complaint notes that Data Trust's chairman and executive director each "have ties to the Republican Party apparatus" and cites several newspaper articles discussing the RNC's role in Data Trust's formation.<sup>8</sup>

Data Trust and the RNC state that Data Trust was formed in 2011 by "a group of Republican leaders,"<sup>9</sup> including former RNC Chairman Robert M. "Mike" Duncan,<sup>10</sup> who "recognized a need in the commercial marketplace for sophisticated data products aimed at conservative and Republican organizations" and "became a for-profit commercial vendor targeting this client base."<sup>11</sup> According to Data Trust, Duncan knew from his tenure with the RNC that the RNC had large voter profiles, but that the profiles had not been adequately updated with sophisticated consumer data that can be used to predict voter behavior.<sup>12</sup> Data Trust and the

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<sup>6</sup> The following respondent candidates (and their authorized committees and treasurers) did not file a response in this matter: Paul Dietzell, Robert Schilling, Steve Lonegan, Martha McSally, Michael Turner, Chris Christie, Rick Perry, Ben Carson, Charles Boustany, Renee Ellmers, Kevin Yoder, and Morgan Griffith. Given the available information, we are comfortable making collective recommendations for the Candidate and Authorized Committee Respondents.

<sup>7</sup> Compl. at 18.

<sup>8</sup> *Id.* at 17-18.

<sup>9</sup> RNC Resp. at 4.

<sup>10</sup> Data Trust Resp. at 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

1 RNC entered into the August 2011 Data Exchange and Enhancement Agreement (the "Data  
2 Exchange Agreement"), under which the RNC would "license portions of its voter list and data  
3 to the Trust in exchange for the Trust's enhancing the files with its data valued at the same fair  
4 market value as the license for the RNC list."<sup>13</sup> Pursuant to the Data Exchange Agreement, each  
5 party would continue to grow and enhance its own data and then exchange those enhancements  
6 with each other on a wholesale basis.<sup>14</sup> Data Trust states that the Data Exchange Agreement, at  
7 its expiration, requires the value of the exchanged data to be equal.<sup>15</sup>

8 According to Data Trust, the base information in its file is obtained from two sources –  
9 the Data Exchange Agreement with the RNC and its own data collection efforts.<sup>16</sup> The latter  
10 includes obtaining addresses, phone numbers, email addresses, and consumer information on  
11 individuals' interests, past purchases, and "thousands of other data points" from commercially  
12 available databases.<sup>17</sup> Data Trust states that its clients then select the data that will be useful to  
13 them and pay fair market rates to Data Trust for access to that data.<sup>18</sup> As part of Data Trust's  
14 standard agreement, clients are required to report back to Data Trust any "data modifications" –  
15 new or corrected data gained by contacting individuals based on the data provided to them by  
16 Data Trust – so that Data Trust can update its file and keep its data current.<sup>19</sup> Data Trust states  
17 that the modifications are incorporated into Data Trust's file, but Data Trust's other clients are

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<sup>13</sup> *Id.* The Data Exchange Agreement was renewed in 2014. RNC Resp. at 5.

<sup>14</sup> Data Trust Resp. at 2.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.*; see Crossroads Resp. at 3 (citing Data Trust's website, <http://www.gopdatatrust.com/>).

<sup>18</sup> Data Trust Resp. at 6.

<sup>19</sup> *Id.* at 7.

1 not informed that new data has arrived, which other client provided the modification, when it  
2 was collected, or who else has accessed the data.<sup>20</sup> According to Data Trust, it does not make  
3 suggestions about which data fields might be useful to clients, nor does it sell political strategy or  
4 “engage in, consult on, or produce any public communications.”<sup>21</sup>

5           2.     Data Trust and the Crossroads Groups

6           Crossroads GPS and American Crossroads (together, the “Crossroads Groups”) are two  
7 of Data Trust’s clients. The Complaint alleges that Data Trust is passing “non-public strategic  
8 campaign and party data” between the RNC and the Crossroads Groups, among others.<sup>22</sup> The  
9 Crossroads Groups state that their agreements with Data Trust provided them with access to raw  
10 data about voters – not strategy.<sup>23</sup> The Crossroads Groups describe the data enhancement  
11 arrangement with Data Trust as part of the consideration of the contract (along with the licensing  
12 fees) and stated that they returned the enhancements to Data Trust on a quarterly basis.<sup>24</sup>  
13 Regarding their use of the data, the Crossroads Groups describe paying Data Trust for access to a  
14 voter file (such as a file containing information about all North Carolina voters), which Data  
15 Trust would then deliver to a consultant hired by the Crossroads Groups for “microtargeting”  
16 analysis.<sup>25</sup> The consultant would then deliver to the Crossroads Groups lists representing various  
17 categories of voters (e.g., “male independent voters between 45-60 years old”) that the

<sup>20</sup> *Id.*; DeStefano Aff. ¶¶ 10-11.

<sup>21</sup> Data Trust Resp. at 7-8.

<sup>22</sup> Compl. at 2.

<sup>23</sup> Crossroads Resp. at 3; Data Trust Resp. at 7.

<sup>24</sup> Crossroads Resp. at 5.

<sup>25</sup> *Id.*

1 Crossroads Groups could then use in targeting their communications.<sup>26</sup> According to the  
2 Crossroads Groups, the internally strategic reasons for selecting a particular group of voters and  
3 the substance of the communications were developed entirely independently of Data Trust or any  
4 candidate or committee.<sup>27</sup> Furthermore, the Crossroads Groups state that Data Trust's data was  
5 only used to create targeted phone and mailing lists, and their television and radio advertisements  
6 were developed entirely without data from Data Trust.<sup>28</sup>

7           3.     Data Trust and the RNC

8           The Complaint alleges that Data Trust maintains the RNC's database and provides  
9 "extensive data services" to the RNC.<sup>29</sup> The Complaint further alleges that the RNC has made  
10 only a single payment of \$25,000 to Data Trust despite receiving services of far greater fair  
11 market value.<sup>30</sup>

12          According to Data Trust, it has never performed list management services for the RNC.<sup>31</sup>  
13 Similarly, the RNC states that it "maintains, operates, and administers its own voter file."<sup>32</sup> Data  
14 Trust states that it began offering data services, such as building applications to view and interact  
15 with the Data Trust's data, following the 2012 elections.<sup>33</sup> Data Trust apparently has received  
16 either \$45,000 or \$60,000 from the RNC for use of this application programming interface since

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<sup>26</sup>     *Id.*

<sup>27</sup>     *Id.* at 4-5.

<sup>28</sup>     *Id.* at 7-9.

<sup>29</sup>     Compl. at 2-3.

<sup>30</sup>     *Id.* at 16.

<sup>31</sup>     Data Trust Resp. at 2-3.

<sup>32</sup>     RNC Resp. at 3.

<sup>33</sup>     Data Trust Resp. at 4.

1 August 2014.<sup>34</sup> The RNC states that it also paid \$5,000 per month to Data Trust during 2013-  
2 2014 to lease the beta version of Data Beacon, a voter relationship management program Data  
3 Trust was developing.<sup>35</sup> According to the RNC, after Data Trust lost interest in developing Data  
4 Beacon, the RNC bought the unfinished product for \$150,000 and paid \$87,800 for engineering  
5 and consulting services to facilitate the transition.<sup>36</sup>

6 4. Data Trust and i360

7 Respondent i360 describes its business as acquiring data and building predictive models  
8 which anticipate (based on thousands of data points) the behaviors and preferences of an  
9 individual (or group of individuals).<sup>37</sup> It sells access to its data library, data management tools,  
10 and modeling and analytical tools; clients then use those tools to locate particular individuals to  
11 target with their communications.<sup>38</sup> According to i360, "the database and its products are not  
12 determinants of communications strategy or usage; they are tools for use once a communications  
13 strategy is already determined."<sup>39</sup> Like Data Trust, i360 maintains that "in no case can a

<sup>34</sup> *Id.* at 9 (\$45,000); RNC Resp. at 5-6 (\$60,000).

<sup>35</sup> RNC Resp. at 5.

<sup>36</sup> *Id.*

<sup>37</sup> i360 Resp. at 2-7.

<sup>38</sup> *Id.* at 6-8. Other respondents provide examples of i360's products and services in their responses. *See, e.g.,* Supp. Resp. of William Hurd and Hurd for Congress at 2-3, Ex. 1 (Oct. 7, 2015) (delineating services provided by i360 and attaching services agreement); Resp. of Arizona Republican Party at 1 (describing how it provided data to i360, which "simply allowed Party users to access this data using their applications," and stating that "i360 informed us that we would *not* have access to any unique data" generated by i360's other clients); Resp. of West Virginia Republican Party at 2 (stating that it "passively received data and never sent any information back to i360 that could conceivably be used by a common vendor in a coordinated communication"); Resp. of Mike McFadden and McFadden for Senate at 2-3 ("In no way did i360, LLC perform provide [sic] any substantive or strategic guidance, beyond administrative guidance, regarding the records that MFS pulled from [i360's] data warehouse"); Resp. of NRSC at 1 ("i360 does not facilitate or otherwise enable any strategic communication whatsoever between NRSC and other i360 clients, nor does i360 provide NRSC with the ability to share or receive any non-public strategy or plans with or from outside groups").

<sup>39</sup> i360 Resp. at 7.

1 customer select data that that customer knows has been generated by a particular customer.”<sup>40</sup>  
2 Customers may upload their own data and use i360’s data management tools to manage the data;  
3 in that event, the data is “siloeed” in its own database and is not shared with other customers.<sup>41</sup> It  
4 is, however, used by i360 to refine and enhance its own data and predictive models.<sup>42</sup>

5 In addition to its data services, i360 provides media placement services to certain clients.  
6 For example, Freedom Partners and AFP appear to be media placement services clients of i360.<sup>43</sup>  
7 Freedom Partners states that it used i360 as a vendor to provide media buying and related  
8 services, but that it is not a subscriber to i360’s data services.<sup>44</sup> According to i360, there is a  
9 “firewall” separating its media placement division from its data operations to ensure compliance,  
10 and i360 “does not have any candidate and/or campaign media buying customers.”<sup>45</sup>

11 In August 2014, Data Trust entered into a data exchange agreement with i360, which  
12 expanded the amount of data available to each vendor’s clients and obligated each party to  
13 provide periodic updates from their databases.<sup>46</sup> The Complaint alleges that in the wake of this  
14 agreement, the RNC and Data Trust “started passing party and campaign data to . . . AFP and all  
15 partners of the Data Trust’s new partner i360” in a “real time exchange of non-public,

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<sup>40</sup> *Id.* at 8.

<sup>41</sup> *Id.* at 9.

<sup>42</sup> *Id.*

<sup>43</sup> See Second Supp. Compl. at Exs. I, II.

<sup>44</sup> Resp. of Freedom Partners at 1-2.

<sup>45</sup> i360 Supp. Resp. at 3 (Oct. 29, 2015). Although i360 stated in its initial response that it did not provide media buying services “to any of the respondents in this matter,” i360 Resp. at 2, n. 1 (Jan. 6, 2015), that statement appears to be inaccurate as to AFP (but accurate as to Freedom Partners, which was not yet a respondent at the time of i360’s initial response). Exhibit I of the Second Supplemental Complaint suggests that AFP was a media buying services client as of October 16, 2014.

<sup>46</sup> Data Trust Resp. at 8; i360 Resp. at 10.

1 strategically material data . . . .”<sup>47</sup> According to Data Trust and i360, the exchanged data do not  
2 contain information about which group collected the data, when they were collected, or who else  
3 has accessed the data.<sup>48</sup>

4 According to the complainant, i360 contracted with AFP, Freedom Partners, the NRSC,  
5 and each of the State Party Committee Respondents and the Candidate and Authorized  
6 Committee Respondents, and thus those parties became part of the data exchange underlying the  
7 coordinated communications allegations.<sup>49</sup> Each of the respondents who filed a response with  
8 the Commission denies that a violation has occurred.<sup>50</sup>

### 9 III. LEGAL ANALYSIS

#### 10 A. The Respondents Did Not Make Coordinated Communications

11 According to the Complaint, the independent expenditures made by AFP, Freedom  
12 Partners, and the Crossroads Groups are coordinated communications because those groups,  
13 through their agreements with Data Trust (the Crossroads Groups) and i360 (AFP, Freedom  
14 Partners), are receiving strategic data about the plans, projects, activities, and needs of the RNC,  
15 the NRSC, State Party Committee Respondents, and Candidate and Authorized Committee  
16 Respondents.<sup>51</sup>

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<sup>47</sup> Compl. at 2.

<sup>48</sup> Data Trust Resp. at 8; i360 Resp. at 10, 23 (“[B]ecause any data points gleaned from the i360 data library or modeling scores have been scrubbed of source, circumstance, or any other identifying information, one customer cannot ‘reverse engineer’ the data in the library in an attempt to gain information about another customer’s activities . . . .”).

<sup>49</sup> Supp. Compl. at 6-7; Second Supp. Compl. at 11-14.

<sup>50</sup> See, e.g., AFP Resp. at 3-7; i360 Resp. at 12-24. At least three respondents note that their campaigns ended months prior to the August 2014 data exchange agreement between Data Trust and i360 that provides the foundation of the coordination allegations. See, e.g., Resp. of Elizabeth Cheney and Cheney for Wyoming at 1; Resp. of Karen Handel and Handel for Senate, Inc., at 2; Resp. of Matt Schultz and Schultz for Iowa at 3, 5.

<sup>51</sup> Compl. at 2-3.



1 The Act prohibits corporations from making contributions, including in-kind  
2 contributions, in connection with a federal election.<sup>52</sup> Correspondingly, federal candidates, their  
3 authorized committees, and political party committees may not knowingly accept a corporate  
4 contribution.<sup>53</sup> An expenditure made by any person "in cooperation, consultation, or concert,  
5 with, or at the request or suggestion of, a candidate, authorized political committee, or a national  
6 or state party committee constitutes an in-kind contribution."<sup>54</sup> These are called "coordinated"  
7 expenditures.<sup>55</sup> An expenditure for a communication is coordinated when the communication:  
8 (1) is paid for, in whole or part, by a person other than the candidate, committee, or party;  
9 (2) satisfies at least one of the content standards described in 11 C.F.R. § 109.21(c); and  
10 (3) satisfies at least one of the conduct standards described in 11 C.F.R. § 109.21(d).<sup>56</sup>

11 The Complaint generally alleges that the payment and content standards are satisfied by  
12 all of the independent expenditures made by the Crossroads Groups since 2011,<sup>57</sup> the "millions  
13 of dollars on 'independent expenditures'" spent by AFP since its agreement with i360,<sup>58</sup> and all  
14 of the disbursements made by Freedom Partners to i360 for independent expenditures. All such  
15 communications satisfy the payment standard because the independent expenditures referred to  
16 by the Complaint were paid for by a person other than the candidates, committees, or parties with

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<sup>52</sup> 52 U.S.C. § 30118(a).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* § 30116(a)(7)(B)(i), (ii); *see also* 11 C.F.R. §§ 109.20, 109.21(b).

<sup>55</sup> 11 C.F.R. § 109.20.

<sup>56</sup> *Id.* § 109.21(a)(1)–(3).

<sup>57</sup> Compl. at 12, Exs. D and E.

<sup>58</sup> *Id.* at 12. The Commission's records reflect that AFP spent \$5,926,538 on independent expenditures between October 1, 2014, and December 31, 2014. *See* 2014 Year-End Report of Americans for Prosperity at 1.

15 In this case, the “common vendor” standard is not satisfied because it appears that Data  
16 Trust and i360 sell access to their data libraries and analytical tools (and administrative services  
17 relating to such access) and are not involved in creating, producing, or distributing

<sup>63</sup> *Id.* § 109.21(d)(4)(i)-(iii).

1 communications.<sup>64</sup> Access to the data is evidently tailored according to parameters the client  
2 selects, and the client may then use the pre-selected data set in a way it deems appropriate for  
3 carrying out its own strategic aims. The available information does not indicate that Data Trust  
4 and i360 are involved in helping their clients select particular data, nor do they appear to be  
5 involved in any subsequent communications. Thus, Data Trust and i360 do not appear to be  
6 commercial vendors that are being employed to "create, produce, or distribute" a communication  
7 for their clients under the first requirement of the "common vendor" standard.<sup>65</sup> Because all  
8 three factors must be satisfied in order to meet the definition of a "common vendor," it is  
9 unnecessary to analyze the second and third factors.

10 Because the conduct standard does not appear to be satisfied under these facts, there is no  
11 basis in the record to conclude that the independent expenditures made by AFP, Freedom  
12 Partners, American Crossroads, and Crossroads GPS and referred to by the Complaint were  
13 coordinated communications. Accordingly, we recommend that the Commission find no reason  
14 to believe that AFP, American Crossroads, Crossroads GPS, Freedom Partners, the RNC, the  
15 NRSC, the State Party Committee Respondents, and the Candidate and Authorized Committee

<sup>64</sup> This analysis concerns the data services provided by Data Trust and i360. The media placement services provided by i360 to AFP and Freedom Partners as described above also do not appear to satisfy the "common vendor" standard. Even assuming the first two parts are met, the available information regarding a "firewall" between i360's media placement services and data services undercuts any factual basis for determining that the third requirement of the "common vendor" standard would be met.

<sup>65</sup> 11 C.F.R. § 109.21(d)(4)(i); Coordinated and Independent Expenditures, 68 Fed. Reg. 421,436 (Jan. 3, 2003) ("Thus, this standard only applies to a vendor whose usual and normal business includes the creation, production, or distribution of communications, and does not apply to the activities of persons who do not create, produce, or distribute communications as a commercial venture."); see MUR 6077 (Norm Coleman) (no coordination where vendor did not participate in creating, producing or distributing ads); MUR 6038 (Doug Lamborn, *et al.*) (allegations of coordination arising out of groups sharing voter lists through a vendor dismissed as a matter of prosecutorial discretion).

1 Respondents violated 52 U.S.C. §§ 30116 or 30118 by making or receiving in-kind contributions  
2 in the form of coordinated communications.<sup>66</sup>

3 **B. Data Trust and the RNC Did Not Make or Receive Prohibited Corporate**  
4 **Contributions**

5 Under the Act, the term "contribution" includes "any gift, subscription, loan, advance, or  
6 deposit of money or anything of value made by any person for the purpose of influencing any  
7 election for Federal office."<sup>67</sup> The provision of any goods or services without charge or at a  
8 charge that is less than the usual and normal charge for such goods or services is a contribution.<sup>68</sup>  
9 The Act prohibits corporations from making contributions to any political party or  
10 organization.<sup>69</sup> Correspondingly, no person may knowingly accept a prohibited contribution.<sup>70</sup>

11 According to Data Trust, the Data Exchange Agreement between the RNC and Data  
12 Trust is an arm's-length, commercial arrangement with mechanisms in place to ensure that the  
13 data exchanged by both parties is of equal value.<sup>71</sup> The available information does not refute or

<sup>66</sup> Although the Commission has stated that non-communication expenditures, when coordinated, are in-kind contributions to the candidate or party committee with whom they are coordinated, Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 426 (Jan. 3, 2003), there does not appear to be such an expenditure in this case. There is no available information suggesting that the things of value traded among the respondents (money, products, and services) were not given in exchange for equal value as part of commercial transactions.

<sup>67</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>68</sup> 11 C.F.R. § 100.52(d)(1).

<sup>69</sup> 52 U.S.C. § 30118(a).

<sup>70</sup> *Id.*

<sup>71</sup> See *supra* at 7-8; Data Trust Resp. at 2

1 otherwise provide any basis to discredit that assertion.<sup>72</sup> Therefore, the Data Exchange  
2 Agreement does not appear to have resulted in a contribution to the RNC from Data Trust.<sup>73</sup>

3 The Complaint also alleges that Data Trust provided data management services to the  
4 RNC that were worth more than a single alleged \$25,000 payment made by the RNC to Data  
5 Trust. The Complaint appears to be incorrect in its assumption, however – Data Trust and the  
6 RNC each state in their responses that the RNC manages its own data, and further, that for all  
7 services provided to the RNC,<sup>74</sup> Data Trust receives “monetary compensation at fair market  
8 rates,” including several payments totaling far more than the amount alleged in the Complaint.<sup>75</sup>  
9 The allegations in the Complaint do not appear to be substantiated, and thus there is no basis to  
10 find that Data Trust made a contribution to the RNC. Accordingly, we recommend that the  
11 Commission find no reason to believe that Data Trust and the RNC violated 52 U.S.C.  
12 § 30118(a) by making or receiving a prohibited contribution.

13 **C. The RNC and Data Trust Did Not Solicit, Receive, or Direct Soft Money**

14 The Complaint alleges that the RNC “illegally established, financed, maintained, and/or  
15 controlled” the Data Trust.<sup>76</sup> Under the Act, as amended by the Bipartisan Campaign Reform

<sup>72</sup> See Statement of Reasons of Comm’rs. Mason, Sandstrom, Smith, and Thomas at 2, MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.) (“[W]hile credibility will not be weighed in favor of the complainant or the respondent, a complaint may be dismissed if it consists of factual allegations that are refuted with sufficiently compelling evidence provided in the response to the complaint . . .”).

<sup>73</sup> See Advisory Op. 2002-14 (Libertarian National Committee) at 5 (“When such exchanges of equal value occur, which are non-reportable events under the Act, no ‘contribution, donation, or transfer of funds or any other thing of value’ takes place . . .”); Advisory Op. 1981-46 (Dellums) at 2; see also Advisory Op. 2014-06 (Ryan, *et al.*) at 8 (recounting Commission’s longstanding position “that a political committee’s mailing lists are assets that have value and that are frequently sold, rented, or exchanged in a market”); Advisory Op. 2014-09 (REED Marketing) at 4 n.6 (citing Advisory Op. 2014-06).

<sup>74</sup> See *supra* at 10-11. Examples include technical support, the purchase and transition costs related to an unfinished computer program, and licenses for certain applications developed by Data Trust.

<sup>75</sup> Data Trust Resp. at 9.

<sup>76</sup> Compl. at 17-18.

1 Act of 2002 ("BCRA"), national political parties and entities directly or indirectly established,  
2 financed, maintained or controlled by, or acting on behalf of, a national political party, may not  
3 solicit, receive, or direct to another person a contribution,<sup>77</sup> donation,<sup>78</sup> or transfer of funds, or  
4 any other thing of value, that is not subject to the prohibitions, limitations, and reporting  
5 requirements of the Act.<sup>79</sup> The ten non-exclusive factors set out at 11 C.F.R. § 300.2(c)(2)  
6 determine whether a person or entity ("sponsor") "directly or indirectly established, financed,  
7 maintained or controlled" another person or entity under 52 U.S.C. § 30125. These factors must  
8 be examined in the context of the overall relationship between the sponsor and the entity to  
9 determine whether the presence of any factor or factors is evidence that the sponsor "directly or  
10 indirectly established, financed, maintained or controlled" the entity.<sup>80</sup>

11 In this case there does not appear to be a violation of the Act. Even assuming that the  
12 RNC established Data Trust, there is only a violation of section 30125 if the RNC or Data Trust  
13 accepted contributions, donations, or transfers of funds, or any other thing of value that is not  
14 subject to the Act's source and amount limitations.<sup>81</sup> The available information, however,  
15 appears to show that Data Trust is operating a commercial enterprise, and that any funds (or  
16 things of value, like data enhancements) it receives are given in exchange for the products and

<sup>77</sup> "Contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A)(i).

<sup>78</sup> "Donation" means "a payment, gift, subscription, loan, advance, deposit, or anything of value given to a person, but does not include contributions." 11 C.F.R. § 300.2(e).

<sup>79</sup> See 52 U.S.C. § 30125; see 11 C.F.R. §§ 300.10(a)(1), (c)(2).

<sup>80</sup> 11 C.F.R. § 300.2(c)(2).

<sup>81</sup> 52 U.S.C. § 30125; see 11 C.F.R. § 300.10(a)(1).

1 services (or data enhancements) it provides to its clients or partners.<sup>82</sup> Accordingly, we  
2 recommend that the Commission find no reason to believe that Data Trust and the RNC violated  
3 52 U.S.C. § 30125 by soliciting, receiving, or directing contributions, donations, transfers of  
4 funds, or any other thing of value, that is not subject to the prohibitions, limitations, and  
5 reporting requirements of the Act.

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<sup>82</sup> See Advisory Op. 2002-14 (Libertarian National Committee) at 4-5 (list rental payments to a party committee were not a "contribution, donation, or transfer of any funds or any other thing of value . . . subject to the limitations [and] prohibitions . . . of [the] Act" when the list had an ascertainable market value, was leased at a usual and normal charge in a bona fide, arm's-length transaction, and was used in a commercially reasonable manner consistent with such an arm's-length agreement).

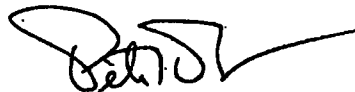
IV. RECOMMENDATIONS

1. Find no reason to believe that AFP, American Crossroads, Crossroads GPS, Freedom Partners, the NRSC, the RNC, the State Party Committee Respondents, and the Candidate and Authorized Committee Respondents violated 52 U.S.C. §§ 30116 or 30118 by making or receiving prohibited or excessive in-kind contributions in the form of coordinated communications.
2. Find no reason to believe Data Trust or the RNC violated 52 U.S.C. § 30118 by making or receiving prohibited in-kind contributions in the form of data management services
3. Find no reason to believe that Data Trust or the RNC violated 52 U.S.C. § 30125 by soliciting, receiving, or directing funds that were not subject to the prohibitions, limitations, and reporting requirements of the Act.
4. Approve the attached Factual and Legal Analysis.
5. Approve the appropriate letters.
6. Close the file.

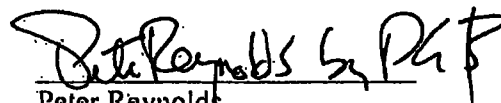
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1.8.16  
Date